

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 436 (2019)¹ Local and regional democracy in the Republic of Moldova

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.*b.*, of the Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the aforementioned Statutory Resolution CM/Res(2015)9, which stipulates that “[t]he Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

e. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

f. its Resolution 420 (2017) on local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the mayor of Chişinău, and its Recommendation 411 (2018) on the fact-finding mission on the situation of local elected representatives in the Republic of Moldova;

g. the explanatory memorandum on local and regional democracy in the Republic of Moldova.

2. The Congress points out that:

a. the Republic of Moldova acceded to the Council of Europe on 13 July 1995. It signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 2 May 1996 and ratified it in full on 2 October 1997. The Charter came into force in respect of the Republic of Moldova on 1 February 1998;

b. the Republic of Moldova has not signed the Additional Protocol to the European Charter of Local Self-Government

on the right to participate in the affairs of a local authority (CETS No. 207);

c. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter “the Monitoring Committee”) decided to examine the situation of local and regional democracy in the Republic of Moldova in the light of the Charter. It entrusted the co-rapporteurs on local and regional democracy, Gunn Marit HELGESEN and Marc COOLS, with the task of preparing and submitting to the Congress a report on local and regional democracy in the Republic of Moldova. The delegation was assisted by Prof. Angel MORENO MOLINA, Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

d. the monitoring visit took place from 12 to 15 June 2018. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum.

3. The co-rapporteurs wish to thank the Permanent Representation of the Republic of Moldova to the Council of Europe and all those whom they met during the visit.

4. The Congress notes with satisfaction that in the Republic of Moldova:

a. the principle of local self-government is explicitly recognised in the constitution and in relevant legislation;

b. efforts have been made towards the full ratification of the Charter and towards a comprehensive change of the domestic legal order aimed at creating an autonomous local level of government;

c. the Charter is considered as a set of binding and operational rules, and the case law of the Constitutional Court ensures its applicability. Moreover, since 2016, every local authority has had the right to litigate before the Constitutional Court in order to protect local autonomy;

d. the present arrangements for the Autonomous Territorial Unit (ATU) of Gagauzia represent a workable political compromise between Chişinău and Comrat that is working well in general, despite some points of tension, and that reconciles the unitary nature of the country with the aspirations for autonomy, devolution and self-determination of the Gagauzian people.

5. The Congress expresses its concerns on the following issues:

a. the National Decentralisation Strategy and the Roadmap for the implementation of Recommendation 322 (2012) of the Congress on local democracy in the Republic of Moldova, co-signed by the Congress of the Council of Europe and the Government of the Republic of Moldova on 7 July 2016, have been implemented only to a limited extent, and the level of local autonomy seems to be being eroded by a trend towards recentralisation; furthermore, Recommendation 179 (2005) on local democracy in

Moldova, and the aforementioned Recommendations 322 (2012) and 411 (2018) have not been fully implemented;

b. local authorities' financial autonomy is very limited and their finances are extremely poor, both in terms of the proportion of own revenues in local budgets and in terms of the share of local spending in total public sector expenditure. Local authorities clearly depend on State transfers and subsidies;

c. the local fiscal system is very weak. The lack of appropriate delimitation of municipal land from private or state property makes it impossible to evaluate the land units for tax purposes and causes a loss of potential local revenues;

d. in many cases, the law attributes new competences to local authorities without at the same time providing for new and adequate financial resources;

e. local authorities do not enjoy full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority;

f. the lack of precision of the grounds for activating the recall referendum mechanism weakens the conditions of office of local elected representatives and leads to a serious dysfunction of local democracy, as mayors work under the constant threat of such a referendum;

g. local authorities are not autonomous in the management of their human resources; they cannot recruit high-quality staff or offer adequate training opportunities, salaries or career prospects;

h. the remuneration of mayors is far from adequate or sufficient, which deters young and qualified people from engaging in local politics;

i. the State intervenes in local affairs through a supervision of local authorities which seems to be very invasive, frequent and much more discretionary than the law would normally allow;

j. there is no consultation mechanism and no fruitful and transparent dialogue between the central government and the local authorities, either on financial issues or on any other matter which is of interest to the local authorities;

k. the situation regarding the position of the Mayor of Chişinău is unsatisfactory: since May 2017, the capital city has been run by acting mayors, and the mayoral elections that took place on 3 June 2018 were declared null and void on unclear and controversial grounds, despite an overall positive assessment of these elections by international observers. The elected candidate has thus been prevented from taking up his mandate;

l. the political context for the exercise of mayoral functions is negatively affected by the intensive practice of bringing criminal prosecutions against mayors and other local representatives (*dossar penale*). Some of these charges seem to be brought for unreasonable or insignificant reasons, which are sometimes linked to the fact that local authorities lack the resources to exercise their powers.

6. In light of the above, the Congress requests that the Committee of Ministers invite the authorities of the Republic of Moldova to:

a. get back on the path to decentralisation through appropriate and full implementation of all previous Congress recommendations: 179 (2005), 322 (2012) and 411 (2018) and through the delegation of new competences to the local level, and by speeding up the process of meeting the objectives approved in the National Decentralisation Strategy and other relevant policies;

b. allocate sufficient financial resources to local authorities, in line with the principle that the resources should be commensurate with the responsibilities;

c. increase the fiscal capacity of local authorities by enabling them to establish local taxes and to determine their rate, and by clarifying the delimitation of municipal lands to allow their re-evaluation for tax purposes;

d. revise and clarify the system of local competences in order, inter alia to avoid situations of overlap between local and central competences, and to allocate concomitant finances to local authorities;

e. allow local authorities to have more discretion in adapting the exercise of their tasks to local conditions;

f. adopt the necessary legal and regulatory arrangements to avoid the possible distorting consequences of the application of local recall referendums in local political life; in the meantime, revise the legal provisions regulating the grounds for calling such a referendum (Article 177.2 of the Electoral Code), in order to provide for more legal certainty and to reduce the scope of discretionary decisions in triggering such popular consultations;

g. increase the managerial capacity of local authorities by giving them more freedom and flexibility in the management of their human resources, so that they can offer training opportunities and adapt and upgrade the remuneration of their own staff members, as well as their career prospects;

h. increase the salaries of mayors and district council presidents in order to offer a salary scale commensurate with the importance of their responsibilities;

i. ensure that supervision of the actions of local authorities is in proportion to the importance of the interests that it is intended to protect and is limited to ensuring legality while refraining from supervision over local authorities' actions in their own areas of competence;

j. reinstate a fair consultation process with local authorities and a political dialogue, in order to come to an agreement on the planned measures that may affect the interests of local authorities;

k. remedy, in the shortest possible time, the current situation regarding the governance of the capital city of Chişinău, in order to ensure the stability of the mayoral office in between

local elections and to prevent the appointment of non-elected acting mayors;

l. find a more appropriate balance between the fight against corruption and the requirements of local democracy, so that the bringing of criminal prosecutions against local elected representatives does not disrupt local political life, and refrain from exercising any type of pressure on local elected representatives;

m. consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority in the near future.

1. Debated and adopted by the Congress on 4 April 2019, 3rd sitting (see Document [CG36\(2019\)15](#), explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG), and Gunn Marit HELGESEN, Norway (R, EPP/CCE).